***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) No.1788/2001**

% **Date of decision: 18th March, 2010**

ANIT KUMAR ..... Petitioner
Through: Mr. Mobin Akhtar, Advocate.

Versus

THE CHAIRMAN TARIFF AUTHORITY FOR MAJOR PORTS & ORS. ..... Respondents
Through: Ms. Rajeshwari Shukla, Mr. Rajiv Dubey & Mr. Ranjan Narain, Advocates for R-1&2.

CORAM :-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? No

2. To be referred to the reporter or not? No

3. Whether the judgment should be reported in the Digest? No

RAJIV SAHAI ENDLAW, J.

1. The petitioner seeks quashing and setting aside of the action of the respondent no.1, Tariff Authority for Major Ports of dispensing with the services of the petitioner w.e.f. 9th October, 2000 and seeks a writ of mandamus directing his reinstatement with all consequential benefits.

2. The respondent Tariff Authority for Major Ports has been created by an amendment of the year 1997 to the Major Port Trusts Act, 1963. The said Authority consists of a Chairman and two Members who are empowered by Sections 48 to 50 of the said Act to regulate the tariff and conditionalities governing application of tariff for services rendered by Major Port Trusts as well as for use of properties of the said Port Trust.

3. The petitioner claims that he was selected and engaged as a daily wage peon in

the office of the respondent w.e.f. 9th September, 1999 and continued in the said post uninterruptedly without any break whatsoever till 9th October, 2000 when his services were discharged. It is further his case that certain other persons also engaged as daily wage peons by the respondent after such engagement of the petitioner were however allowed to so continue. The petitioner claims such action of the respondent to be arbitrary, discriminatory and malafide. Motives for the same are also attributed to an officer of the respondent. It is the contention of the petitioner that the principle of "last come first go" has to be followed in the matter of casual employment also and the respondent which is a State within the meaning of Article 12 of the Constitution of India cannot indulge in "hire and fire" in the matter of casual employment.

4. The respondent in its counter affidavit has controverted that the petitioner has worked continuously as a daily wage peon from 9th September, 1999 to 9th October, 2000. It is their case that the petitioner worked from 9th September, 1999 to 24th November, 1999 and from 30th November, 1999 to 25th January, 2000 i.e. for a period of 110 days; thereafter on the name of the petitioner being sponsored by the Employment Exchange, he was again engaged as a daily wage peon on a casual basis and worked form 8th May, 2000 to 12th August, 2000 and from 4th September, 2000 to 9th October, 2000 (108 days) when his services were dispensed with on finding that the petitioner had tampered with official records. It is further stated that there are no Rules & Regulations governing the employment of casual workman and neither any appointment nor any discharge letter had been issued to the petitioner.

5. The petitioner has filed a rejoinder controverting the averments in the counter affidavit and reiterating his case in the petition. The respondent has filed sur rejoinder thereof.

6. This writ petition was dismissed by this Court vide order dated 28th August, 2006 on the ground that the averments made in the petition raise an industrial dispute and remedy of adjudication of the said dispute under provisions of Industrial Disputes Act was available to the petitioner and the writ petition was not maintainable. It was also observed that the disputed questions of fact could not be adjudicated in the writ remedy. Review applied by the petitioner of the said order was also dismissed. The petitioner preferred LPA No.2398/2006 to the Division Bench where it was the contention of the counsel for the respondent that the respondent is not amenable to the jurisdiction of the Labour Court. In view of the said statement, the Division Bench held that the alternative remedy of raising an industrial dispute and on the basis whereof the writ petition had been dismissed, being not available to the petitioner, the matter was remanded to this Court for decision afresh.

7. The counsels have been heard.

8. The counsel for the petitioner besides reiterating the contents of the petition as noticed above also handed over copy of an order dated 14th June, 2001 of the respondent whereby certain daily wagers working with the respondent were given the status of temporary employees. Per contra, the counsel for the respondent has contended that the petitioner being admittedly a daily wage employee, the matter is fully covered by a Division Bench judgment of this Court in ***Delhi State Industrial Development Corporation Vs. J.K. Thakur*** 91 (2001) DLT 738 (DB) and Special Leave where against being SLP Civil No.15425 of 2001 was dismissed on 17th September, 2001. Reference is also made to ***Secretary, State of Karnataka Vs. Umadevi*** (2006) 4 SCC 1 to contend that the petitioner by way of regularization cannot be permitted to make a back door entry. It is further contended that even though the remedy of approaching the Labour Court is not available to the petitioner but in view of the disputed vital facts as to the number of days

for which the petitioner has worked continuously, the petitioner has the civil remedy available to him and the said disputed facts cannot be adjudicated in writ jurisdiction. The respondent in its counter affidavit has also denied that the other persons who have been given the temporary status had been engaged after the engagement of the petitioner. It is pleaded that they were employed also on daily wage basis along with the petitioner.

9. I may notice that the petitioner in the rejoinder filed by him has also taken a plea that the discharge of the petitioner as per averments in the counter affidavit being for the reason of tampering of official records, the respondent ought to have held an inquiry, the dismissal being stigmatic. Though the counsel for the petitioner did not cite but I find on the file copies of the judgments in ***Samsher Singh Vs. State of Punjab*** AIR 1974 SC 2192 and ***Chandra Prakash Shahi Vs. State of U.P.*** JT 2000 (5) SC 181 on the said aspect. The counsel for the petitioner also rejoins that the judgment in ***Umadevi*** (supra) does not apply in as much as the petitioner is not seeking any regularization and is only wanting this Court to hold his dismissal to be bad. He further contends that there is no system of direct appointment of any peons in the respondent and that the petitioner still remains unemployed and owing to being overage is not left capable of seeking employment elsewhere.

10. The Division Bench of this Court in **. *J.K. Thakur*** (supra) had framed a question as to whether a daily rated worker was entitled to any inquiry and hearing before dismissal/discharge which could be traced to a bribery charge and because he had put in seven years. It was held that a right of inquiry and hearing arises on holding a post and such a right is not for asking by all and sundry and is conferred under the law and the rules. It was further held that where an employee is not holding any post he was liable to be sent out on terms of appointment/contract. It was thus held that a casual worker was not entitled to a right of such inquiry. The Division Bench further held that a daily wager

cannot claim regularization as a matter of right or course because of having remained in engagement for few years unless any rules/circular/policy of the Employer provide for such deemed regularisation on completion of a specific period of engagement. In the absence of such provision it was held that his services could be treated as regularised only on passing of an appropriate order by the Competent Authority.

11. I do not consider it necessary to delve further on the question of whether the petitioner was entitled to any inquiry and/or whether his discharge is bad for this reason. Firstly, there is no foundation laid for the same. The same is not a ground taken in the petition. Secondly, the discharge/dismissal of the petitioner was not amounting to placing any stigma on him. It is only when the petitioner filed this petition on other grounds before this Court challenging the policy of the respondent of "hire and fire", did the respondent in the counter affidavit give the reasons for discharging the petitioner while continuing with the others similarly placed as him. Such explanation before the court which any authority, as the respondent is, is expected to give to explain its action cannot constitute a stigmatic discharge requiring an inquiry. The intent and motive of the respondent was not to discharge the petitioner for the reason of his having tampered with the official record or to impute any such charge on the petitioner. The whole idea of probation or of temporary employment is for the employer to gauge the character, conduct, compatibility etc. of the employee. Upon being dissatisfied, the employer without imputing any such charge on the employee is entitled to simply discharge him. Merely because before the court an explanation is furnished and when again still no charge is made against the petitioner, no such inquiry can be sought. The judgment in **Samsher Singh** & **Chandra Prakash Shahi** (supra) are not found applicable. The discharge of the petitioner is not traceable to any inquiry conducted behind the back of the petitioner. The reasons stated are not result of any such inquiry behind the back of petitioner but for a simplicitor discharge.

12. The facts averred by the petitioner of discrimination meted out to him are disputed. Adjudication thereof cannot be in this jurisdiction. The remedy if any of the petitioner of establishing such facts, if not before Labour Court as held by the Division Bench, is before the Civil Court. Without the petitioner establishing the said facts the petitioner is not entitled to the reliefs claimed in this writ even if he were to be entitled thereto in law.

The petition therefore fails and is dismissed.

No order as to costs.

RAJIV SAHAI ENDLAW
(JUDGE)

18th March, 2010
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